IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1118 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOLASHANKAR @ BHOLA NARADBHAIDAVE - DETENU - THRO.WIFE

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 1118 of 2004

MR NM KAPADIA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19/09/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that seven I.P.C. offences were registered against him before Kopadra Police Station between 27/02/03 and 07/08/03 for offences relating to theft of gold and silver ornaments, cash, computers etc.. It was also alleged against the petitioner that two witnesses had given statements against the petitioner.

3. On the strength of the aforesaid seven registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person" and with a view to prevent him from continuing his illegal activities leading to a threat to public order, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that some I.P.C. offences were registered, it could not be said that the activities of the petitioner would lead to a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. During the course of hearing, it has been contended by the learned advocate for the petitioner that the present petitioner and the petitioner in S.C.A.No.1117/2004 were involved in the same set of seven offences and that the two witnesses who had rendered statements in the aforesaid petition have also rendered statements against the present petitioner. It is, therefore, contended that when the petition of the earlier petitioner has been allowed by this Court today and when this petitioner is on par with the said

petitioner - detenu, then it would be appropriate to deal with this petition on the same considerations.

7. On hearing the learned advocates for the parties, it is found that the two petitioners in the two petitions were involved in the same set of seven offences and that the witnesses' statements against both the petitioners are also common. Therefore, the case of the petitioner is factually on par with the case of the detenu in S.C.A.No.1117/2004. Now, when the aforesaid petition has been allowed, then on the principle of parity, this petition is also required to be allowed.

8. For the foregoing reasons and for the reasons mentioned in S.C.A.No.1117/2004, this petition is allowed. The impugned order of detention dated 19/09/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Bholashankar @ Bholo Naradbhai Dave, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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